

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL J MARQUETTE
Claimant

APPEAL 17A-UI-09050-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIEVERS FAMILY FARMS LLC
Employer

**OC: 05/07/17
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)a(6) – Timeliness of Appeal from the Quarterly Statement of Charges

STATEMENT OF THE CASE:

The employer filed an appeal from the August 15, 2017, (reference 01) unemployment insurance decision that allowed benefits finding the employer's notice of protest was untimely. The parties were properly notified about the hearing. A telephone hearing was held on September 21, 2017. Claimant did not participate. Employer participated through Lisa Sievers and Brian Sievers. Employer's Exhibit 1 was admitted into the record.

ISSUES:

Did the employer file a timely appeal?
Did the employer file a timely protest of the claim?
Did the employer file a timely appeal from a quarterly statement of benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: In late 2013 the employer moved from one home to another. Ms. Sievers accessed the employer's MYIowaUI account and changed their address under the first tab. Ms. Sievers also arranged for automatic forwarding of their mail through the US Post office. Ms. Sievers did not realize that she needed to change her address in two separate locations on the employer's MyIowaUI account. As a result the employer never received the notice of protest that was mailed to their old incorrect address on May 12, 2017.

On August 9, 2017, the second quarter statement of charges for 2017 was mailed to the employer at their correct mailing address. The statement of charges was the first notice the employer had that their account was subject to charges. Once the employer received the statement of charges they immediately contacted the chargeback unit of Iowa Workforce Development Department on August 15, 2017. In speaking with an employee they learned that the address on their account was incorrect. The address on their account was not corrected before the representative's decision was mailed out to them.

On August 15, 2017, a decision finding the employer's notice of protest untimely was mailed to the employer's incorrect mailing address. The employer never received the decision as it was sent to the wrong address and their forwarding order at the post office had expired. The employer did not learn of the representative decision finding their protest untimely until September 1 when a copy was electronically forwarded to them at a correct e-mail address. During that same time period the employer learned that the claimant had not reported his rehired to the agency.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the employer's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of the decision, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

The next issue is whether employer's protest is timely. The administrative law judge concludes it is.

Iowa Code section 96.6(2) provides, in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The employer did not have an opportunity to protest the notice of claim because the notice was not received as the agency had the wrong mailing address for the employer. Without timely notice of potential liability to their account, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within one day of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

Finally, the employer has filed a timely appeal to the statement of charges.

Iowa Code section 96.6(2) provides, in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Iowa Code section 96.7(2)a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

An employer is only allowed to appeal to the department for a hearing to determine the eligibility of the individual to receive benefits *if they were not previously notified* pursuant to Iowa Code § 96.6(2) of the notice of claim. In this case, the employer did not receive the notice of claim. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have been met.

The administrative law judge concludes that the employer filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because it did not receive the notice of claim indicating the claimant had filed a claim for benefits. The employer's appeal of that Statement within thirty days is timely. The issue as to the reason for the separation is remanded to the unemployment insurance service center (claims section) of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The August 15, 2017 (reference 01), decision is reversed. The employer has filed a timely protest as they never received the notice of claim. The August 9, 2017, Statement of Charges

for the second quarter of 2017 is reversed. The employer has filed a timely appeal from that Statement of Charges, as the Notice of Claim was not received.

REMAND:

The issue as to the reason for the claimant's separation from the employment is remanded to unemployment insurance service center (claims section) of Iowa Workforce Development for an initial investigation and determination.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs